

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SAN FRANCISCO HEALTHCARE
AND REHAB, INC.**

and

**Cases 20-CA-35415
20-CA-35418**

**SEIU UNITED HEALTHCARE
WORKERS - WEST**

DECISION AND ORDER

Statement of the Cases

On December 2, 2011, San Francisco Healthcare and Rehab, Inc. (the Respondent), SEIU United Healthcare Workers – West (the Union), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board’s approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board’s Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

FINDINGS OF FACT

1. The Employer’s business

From on or about October 11, 2010, and forward, the Respondent, a California corporation, has been engaged in providing healthcare, including long-term custodial care and rehabilitation services, at its 1477 Grove Street, San Francisco, California location.

¹ By order dated December 6, 2011, Administrative Law Judge Gerald M. Etchingham approved this Formal Settlement Stipulation.

Based on a projection of its operations since February 11, 2011, the Respondent, during the calendar year ending December 31, 2011, in conducting its operations described above, will derive gross revenues in excess of \$100,000, and will purchase and receive goods valued in excess of \$5,000 which originate from points outside the State of California.

Since October 11, 2010, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

2. The labor organization involved

At all material times, SEIU United Healthcare Workers – West, the Union, has been an organization in which employees participate, and which exists, in whole or in part, for the purpose of representing employees in dealings with persons and employers regarding labor disputes and bargaining collectively with respect to employee wages, hours and working conditions.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, San Francisco Healthcare and Rehab, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with the Union in the following appropriate unit (the Unit):

All non-supervisory licensed vocational nurses, nurses aides, certified nurses aides, physical therapy aides, activity aides, restorative aides, housekeepers, laundry aides, kitchen aides, central supply aides, maintenance aides, cooks and home health care workers employed at the Employer's facility located at 1477 Grove Street, San Francisco, California; excluding Administrator, Department Heads, RNs, supervisory licensed nurses, office clerical employees, and guards and supervisors as defined in the Act.

(b) Making changes to terms and conditions of employment of Unit employees without first notifying the Union and affording it in good faith an opportunity to bargain

over them, including, but not limited to, terminating Unit employees, subcontracting Unit work, implementing a new employee handbook and employer rules, and converting employees to independent contractor status.

(c) Engaging in conduct, including refusing to hire or consider hiring employees for employment, intended to avoid its obligation to recognize and bargain with the Union.

(d) In any like or related manner interfering with, restraining or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon the Union's request, recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the Unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, reduce it to writing and sign it.

(b) Rescind, at the Union's request, the employee handbook and new employer rules implemented on February 11, 2011, and offer reinstatement to any employees who were terminated pursuant to the unilaterally implemented handbook and rules, to their former job positions or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their rights and privileges, displacing, if necessary, any newly hired or reassigned employees.

(c) Within 14 days from the date of the Board's Order, offer to Maria Olmedo full reinstatement to her former job position, or to a substantially equivalent position, without prejudice to her seniority rights and privileges previously enjoyed, displacing, if necessary, any newly hired or reassigned workers.

(d) Within 14 days from the date of the Board's Order, offer the housekeeping employees employed in the classifications of hospitality aides, turners and/or sitters, including Ester San Jose, Jeanny Ulanday, Xue Ying Zhang, Kim Mary Endriga, Angel Cantan Jay, and Carmen Perez, who were terminated in November or December 2010, reinstatement to their former job positions, or to substantially equivalent positions, without prejudice to their seniority rights and privileges previously enjoyed, displacing, if necessary, any newly hired or reassigned workers.

(e) Within 7 days of the Board's Order, perform the actions required to instigate cancellation of the subcontracts covering the classifications of housekeeper, laundry aides, kitchen aides, and cooks that became effective on February 11, 2011, and, within the contractually-allotted time, rescind the subcontracts, *provided however*, that inasmuch as the Respondent would seek to supplement its housekeeper, laundry aides, kitchen aides, and cooks workforce in anticipation of a State survey to be performed by January 2012, termination of the contracts need not take effect until February 1, 2012.

(f) Within 14 days of the Board's Order, offer to employees who were terminated on about February 10, 2011, as a result of the subcontracts that became effective on February 11, 2011, reinstatement to their former job positions or to substantially equivalent positions without prejudice to their rights and privileges, displacing, if necessary, any newly hired or reassigned workers, *provided however*, if the Respondent establishes that there is insufficient work to accommodate immediate employment of any of these alleged discriminatees at its facility, the Respondent shall place their names on a preferential hiring list from which the Respondent will, in a nondiscriminatory manner, exclusively fill all future Unit job vacancies that may arise, *and provided* that the term "insufficient work," as used in this subparagraph, is not to include impacts associated with the Respondent's decision to supplement its housekeeper, laundry aides, kitchen aides, and cooks workforce through February 1, 2012. Said employees include, but are not limited to: Bi Lian Deng, Dennis Echon, Ricardo Echon, Rodolfo Jereza, Guang Liang Liu, Pia Logarta, Gui Qing Lu, Kevin Phung, May Tan, Maria E. Vega, Maria R. Vega, Macario Abrajano, Angeles Catanyag, Yu Lan Chen, Franklin Emilia, Eduardo C. Fernandez, Linda Fontelar, Anthony F. Francisco, Cristy Guillermo, David Guillermo, Mei Lian Huang, Chuen Yuep Jone, William Laban, Lourdes Mercedes, John Nevado, Myrlina Nombrado, Carmen Perez de Martir, Herminio B. Santos, Ying-Si Zhong, and Tianqin Yang.

(g) Within 14 days of the Board's Order, offer to employees whom it unilaterally terminated on February 10, 2011, and whom it did not rehire on February 11, 2011, reinstatement to their former job positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their rights and privileges, displacing, if necessary, any newly hired or reassigned workers, *provided however*, if the Respondent establishes that there is insufficient work to accommodate immediate employment of any of these alleged discriminatees at its facility, the Respondent shall place their names on a preferential hiring list from which the Respondent will, in a nondiscriminatory manner, exclusively fill all future Unit job vacancies that may arise. Said employees include, but are not limited to: Menelito Abuan, Roma Balberan, Virginia Bautista, Ingrid Castrillo, Fedrico Castro, Boniface Emelife, Amanda Garcia, Antonio Gonzales, Elizabeth Hornsby, Shirley Igtanloc, Pearl Eke, Brigitte Kouamo, Julia Lopez, Fe Lorenza Macaspac, Adela Montes, Marjorie Nored, Lee Tabb, Elizabeth Kambey, Nelly Robles, Tsewang Tsomo, Jennifer Washington, Gracelda Castro Zastros, Camille Ann S. Mallari, Su Chen, Walter Gutierrez, Shi Ji Liang, Guo-Tang Sun, Violeta Ancheta, Marina Colmenarez, Piarosario Custodio, Laura Delos Reyes, Sonam Diki, Jonalyn Dizon, Tsamchoe Dolma, Chinwe Egu, Allan Frias, Yizhi Huang, Shirley Lopez, Teresita Macato, Adelina Marshall, Marilyn Rillorta, Bennet Torio, Marilene Villanueva, Robertalee Viray, and Victoria Guerra.

(h) Within 14 days of the Board's Order, offer to the individuals whom it unilaterally terminated as employees on February 10, 2011, and unilaterally converted to independent contractors as of about February 11, 2011, reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their rights and privileges, displacing, if necessary, any newly hired

or reassigned workers. Said employees include, but are not limited to: Tessie Abuan, Aniette Castro, Grace Divina Dado, Eddie Durante, Elizabeth Eatmon, Beatrice Eke, Anthony Francisco, Emily Hanna, Maria M. Incer, Claudia Rodriguez, Yerusalem Teweldemedhin, and Yasmine Yunzal.

(i) Make whole, with interest, the employees named or referred to above in subparagraphs 2(b) through (d) and 2(f) through (h) for all losses suffered as a result of their unlawful terminations of employment. Should the Respondent utilize a preferential rehire list, as described in the subparagraphs above, it is understood that backpay will continue to accrue for said placed employees until such time as they are reinstated or decline a valid offer of reinstatement. Lost wages and other benefits will be calculated pursuant to the Board's standard practices and procedures, including interest compounded on a daily basis, the reimbursement by the Respondent to employees of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no unfair labor practices, and the requirement that the Respondent submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Absent agreement of the parties with respect to all monetary remedies, a Compliance Specification may issue and, if necessary, a hearing on said Specification will be conducted in accordance with the Board's usual procedures for determining monetary remedies. Should the Respondent choose voluntarily to comply with the make-whole remedy determined via the Board's standard practices and procedures, which calculations will be presented to the Respondent in advance of the final determination and agreement and subject to mutual review and agreement of the parties hereto, short of the issuance of a Formal Compliance Specification, the Respondent will be responsible for payment of 80% of the make-whole remedy. Should the issuance of a Formal Compliance Specification be required, the Respondent will be responsible for payment of 90% of the make-whole remedy determined after proceedings upon such Compliance Specification.

(j) Within 14 days of the Board's Order, for those employees not reinstated or who otherwise do not accept employment pursuant to this Stipulation and Order, pay to all employees unilaterally terminated on February 10, 2011, and to the employees named above in subparagraph 2(c), the amount of accrued vacation time, also known as PTO, with interest, owing to them pursuant to the terms and conditions of the collective-bargaining agreement last in effect at the Grove Street facility. For those employees who accept reinstatement pursuant to this Stipulation and Order, restore the amount of vacation time accrued as of February 10, 2011, pursuant to the terms and conditions of the collective-bargaining agreement last in effect at the Grove Street facility.

(k) Within 14 days of the Board's Order and upon request of the Union, rescind any or all changes to terms and conditions of employment implemented after October 10, 2010 for bargaining Unit employees, including any newly hired employees, including, but not limited to, those relating to wage rates, scheduling and hours, health

and dental benefits, disciplinary procedures, at-will employment, attendance and punctuality, holidays, and vacations.

(l) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of make-whole amounts due under the terms of this Order.

(m) Within 14 days of service by the Region, post at its Grove Street facility in San Francisco, California, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 20, after being signed by the Respondent's authorized representative, shall be posted for a period of sixty (60) days, in English, Spanish, Tagalog, and Chinese, in conspicuous places, including all places where notices to its employees are normally posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 15, 2010.

(n) Within twenty (20) days of the issuance of the Board's Order, file with the Regional Director of Region 20 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which the Respondent has complied with the terms of the Board's Order, including the locations of the posted documents.

Dated, Washington, D.C., December 16, 2011.

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF
APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

The Service Employees International Union United Healthcare Workers – West is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following Unit:

All non-supervisory licensed vocational nurses, nurses aides, certified nurses aides, physical therapy aides, activity aides, restorative aides, housekeepers, laundry aides, kitchen aides, central supply aides, maintenance aides, cooks and home health care workers employed at the Employer's facility located at 1477 Grove Street, San Francisco, California; excluding Administrator, Department Heads, RNs, supervisory licensed nurses, office clerical employees, and guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of our Unit employees.

WE WILL NOT make changes to terms and conditions of your employment without first notifying and bargaining with the Union. This includes, but is not limited to, terminating all Unit employees, subcontracting Unit work, converting employees to independent contractor status, and implementing a new employee handbook and employer rules.

WE WILL NOT terminate employees, refuse to hire or consider job applicants; subcontract employees' work; or convert employees into independent contractors with the intent to avoid our obligation to recognize and bargain with the Union.

WE WILL NOT in any like or related manner, interfere with your rights under Section 7 of the Act.

WE WILL, on request, recognize and bargain in good faith with the Union as your exclusive bargaining representative about your wages, hours of employment, and other conditions of employment, and, if an understanding is reached, reduce it to writing and sign it.

WE WILL, if requested by the Union, rescind the employee handbook and new employer rules implemented on February 11, 2011, and **WE WILL** offer reinstatement to employees who were terminated pursuant to the unilaterally implemented handbook and rules to their former job positions or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their rights and privileges, displacing, if necessary, any newly hired or reassigned employees.

WE WILL, if requested by the Union, rescind any or all changes to Unit employees' terms and conditions of employment implemented after October 10, 2010, including any newly hired employees.

WE WILL offer all housekeeping employees employed in the classifications of hospitality aides, turners and/or sitters who were terminated in November or December 2010 their former jobs, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and all other rights or privileges.

WE WILL rescind the subcontracts covering the classifications of housekeeper, laundry aides, kitchen aides, and cooks that became effective on February 11, 2011, and **WE WILL** offer all Unit employees who were terminated on about February 10, 2011, as a result of the subcontracts that became effective on February 11, 2011, their former jobs, or to substantially equivalent positions without prejudice to their seniority and all other rights or privileges, but provided that if there is insufficient work for the immediate reinstatement of said employees, the employees' names will be placed on a preferential hiring list.

WE WILL offer all Unit employees terminated on February 10, 2011, and who were not rehired on February 11, 2011, their former jobs, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and all other rights or privileges, but provided that if there is insufficient work for the immediate reinstatement of said employees, the employees' names will be placed on a preferential hiring list.

WE WILL offer all Unit employees terminated on February 10, 2011, and unilaterally converted to independent contractors as of about February 11, 2011, their former jobs, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and all other rights or privileges.

WE WILL make whole, with interest, all Unit employees eligible for reinstatement as described above, and **WE WILL** make Unit employees whole, with interest, for wages and other benefits lost because of the changes to terms and conditions of employment that we made without bargaining with the Union.

WE WILL remove from our files all references to the discharge of all employees eligible for reinstatement as described above, and **WE WILL** notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL remove from our files all references to the failure to hire any employees terminated on February 10, 2011, and who were considered for rehire, and **WE WILL** notify them in writing that this has been done and that the failure to hire them will not be used against them in any way.

WE WILL, for those employees who accept reinstatement to their jobs, restore the amount of vacation time (also known as "PTO") accrued as of February 10, 2011, under the terms of the collective-bargaining agreement last in effect at the Grove Street facility, and **WE WILL**, for those employees who do not accept reinstatement to their jobs, pay out the amount of accrued vacation time owed to them as of February 10, 2011, pursuant to the expired collective-bargaining agreement.

SAN FRANCISCO HEALTHCARE AND REHAB, INC.

(Employer)